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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 EVELYN C.,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Deputy
10 Commissioner of Social Security for
11 Operations,

12 Defendant.

CASE NO. C18-1294 BHS

ORDER REVERSING AND
REMANDING DEFENDANT'S
DENIAL OF BENEFITS

13 **I. BASIC DATA**

14 Type of Benefits Sought:

15 () Disability Insurance

16 (X) Supplemental Security Income

17 Plaintiff's:

18 Sex: Female

19 Age: 48 at the time of alleged disability onset.

20 Principal Disabilities Alleged by Plaintiff: Human Immunodeficiency Virus ("HIV"),
21 diabetes, peripheral neuropathy, carpal tunnel, arthritis, left hand injury, dyslexia, chronic
22 pain, depression, sinus issues. AR at 155-56.

1 Disability Allegedly Began: September 1, 2012.¹

2 Principal Previous Work Experience: Commercial/industrial cleaner; production
3 assembler; brush painter; cook helper/dishwashing kitchen helper/cashier (composite
job); bartender; waitress.

4 Education Level Achieved by Plaintiff: Eighth grade.

5 **II. PROCEDURAL HISTORY—ADMINISTRATIVE**

6 Before Administrative Law Judge (“ALJ”):

7 Date of Hearing: April 13, 2017, May 25, 2017

8 Date of Decision: August 28, 2017

9 Appears in Record at: AR at 190-205

10 Summary of Decision:

11 The claimant has not engaged in substantial gainful activity since
12 June 24, 2014, the application date. *See* 20 C.F.R. §§ 416.971-76.

13 The claimant has the following severe impairments: HIV, diabetes
14 mellitus, carpal tunnel syndrome, peripheral neuropathy, Raynaud’s
syndrome, drug use and substance addiction disorders, affective disorders,
and borderline intellectual functioning. *See* 20 C.F.R. § 416.920(c).

15 The claimant does not have an impairment or combination of
16 impairments that meets or medically equals the severity of one of the listed
impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. *See* 20 C.F.R.
§§ 416.920(d), 416.925, 416.926.

17 The claimant has the residual functional capacity (“RFC”) to
18 perform light work as defined in 20 C.F.R. § 416.967(b), except she can lift
and/or carry 20 pounds occasionally and 10 pounds frequently. She can
19 stand and/or walk with normal breaks for three hours in an eight-hour
workday or work tasks permit a sit/stand option. She can sit with normal
20 breaks for six hours in an eight-hour workday. She is limited to frequent

21 ¹ Plaintiff filed a prior application for disability benefits, which was denied on August 10,
22 2012. *See* AR at 125-42. The Appeals Council denied review, and Plaintiff did not seek review
in the District Court. *See id.* at 148-50.

1 bilateral handling, fingering, and feeling. She must avoid concentrated
2 exposure to hazards, vibration, and extreme cold. She can frequently climb
3 ramps and stairs, and crawl. She can occasionally climb ladders, ropes, and
4 scaffolds. Plaintiff can understand and remember simple, routine work
5 tasks. Work tasks should not involve reading above the seventh grade
6 level. She can follow simple work guidelines, but goals should be set by a
7 supervisor. She cannot perform at a production rate pace, but can perform
8 goal-oriented work. There can be occasional changes to the work
9 environment. She would be off-task about 10 percent of the time in an
10 eight-hour workday.

11 The claimant is unable to perform any past relevant work. *See* 20
12 C.F.R. § 416.965.

13 The claimant was in the younger individual age category on the date
14 her application was filed. She subsequently changed age category to
15 closely approaching advanced age. *See* 20 C.F.R. § 416.963.

16 The claimant has a limited education and is able to communicate in
17 English. *See* 20 C.F.R. § 416.964.

18 Transferability of job skills is not an issue in this case because the
19 claimant's past relevant work is unskilled. *See* 20 C.F.R. § 416.968.

20 Considering the claimant's age, education, work experience, and
21 RFC, there are jobs that exist in significant numbers in the national
22 economy that the claimant can perform. *See* 20 C.F.R. §§ 416.969,
416.969(a).

The claimant has not been under a disability, as defined in the Social
Security Act, since June 24, 2014, the date the application was filed. 20
C.F.R. § 416.920(g).

Before Appeals Council:

Date of Decision: July 20, 2018

Appears in Record at: AR at 212-14

Summary of Decision: Denied review.

1 **III. PROCEDURAL HISTORY—THIS COURT**

2 Jurisdiction based upon: 42 U.S.C. § 405(g)

3 Brief on Merits Submitted by (X) Plaintiff (X) Commissioner

4 **IV. STANDARD OF REVIEW**

5 Pursuant to 42 U.S.C. § 405(g), the Court may set aside the Commissioner’s
6 denial of Social Security benefits when the ALJ’s findings are based on legal error or not
7 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d
8 1211, 1214 n.1 (9th Cir. 2005). “Substantial evidence” is more than a scintilla, less than
9 a preponderance, and is such relevant evidence as a reasonable mind might accept as
10 adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971);
11 *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for
12 determining credibility, resolving conflicts in medical testimony, and resolving any other
13 ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
14 While the Court is required to examine the record as a whole, it may neither reweigh the
15 evidence nor substitute its judgment for that of the ALJ. *See Thomas v. Barnhart*, 278
16 F.3d 947, 954 (9th Cir. 2002). “Where the evidence is susceptible to more than one
17 rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion
18 must be upheld.” *Id.*

19 **V. EVALUATING DISABILITY**

20 Plaintiff, as the claimant, bears the burden of proving she is disabled within the
21 meaning of the Social Security Act (“Act”). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th
22 Cir. 1999). The Act defines disability as the “inability to engage in any substantial

1 gainful activity” due to a physical or mental impairment which has lasted, or is expected
2 to last, for a continuous period of not less than twelve months. 42 U.S.C.
3 §§ 423(d)(1)(A), 1382c(3)(A). A claimant is disabled under the Act only if her
4 impairments are of such severity that she is unable to do her previous work, and cannot,
5 considering her age, education, and work experience, engage in any other substantial
6 gainful activity existing in the national economy. 42 U.S.C. § 423(d)(2)(A); *see also*
7 *Tackett v. Apfel*, 180 F.3d 1094, 1098–99 (9th Cir. 1999).

8 The Commissioner has established a five-step sequential evaluation process for
9 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R.
10 §§ 404.1520, 416.920. The claimant bears the burden of proof during steps one through
11 four. *Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009). At
12 step five, the burden shifts to the Commissioner. *Id.*

13 VI. ISSUES ON APPEAL

- 14 A. Whether the ALJ properly evaluated Plaintiff’s knee impairment at step two
15 of the disability evaluation process.
- 16 B. Whether the ALJ properly evaluated Plaintiff’s mental impairments at step
17 three of the disability evaluation process.
- 18 C. Whether the ALJ properly evaluated Plaintiff’s symptom testimony.
- 19 D. Whether the ALJ properly evaluated the medical evidence, including the
20 opinions of Wayne Dees, Psy.D.; Rebekah Cline, Psy.D.; Michelle Kim,
21 Ph.D.; Christine Youdelis-Flores, M.D.; Albert Gee, M.D.; and Rachel
22

1 Bender Ignacio, M.D.

2 E. Whether the ALJ properly assessed Plaintiff's RFC and conducted the step
3 five evaluation.

4 VII. DISCUSSION

5 A. The ALJ Did Not Harmfully Err in Evaluating Plaintiff's Knee Impairment 6 at Step Two

7 Plaintiff argues that the ALJ erred at step two in failing to find that her alleged
8 knee impairment was severe. Pl. Op. Br. (Dkt. # 10) at 2-3. The Court disagrees.

9 In 2017, Plaintiff underwent an MRI on her left knee, which revealed diffuse
10 synovitis around the knee joint, a large radial tear of the medial meniscus, red marrow
11 reconversion, tricompartmental chondromalacia, and mild patellofemoral osteoarthritis.
12 AR at 890. Albert Gee, M.D., opined that the radial tear "essentially defunctionalized the
13 entire medial meniscus," but felt that surgery was unlikely to "restore[] any of the
14 biomechanics of the meniscus in the extreme loading conditions that it is under from a
15 tension standpoint." *Id.* at 880. Travis Fann, PA-C, opined that Plaintiff was not able to
16 "walk a block at a reasonable pace on rough or uneven surfaces," "carry out routine
17 ambulatory activities" such as grocery shopping, and "climb several stairs at a reasonable
18 pace with use of only a single hand rail." *Id.* at 877.

19 The ALJ did not discuss this evidence as part of his step two analysis. *See id.* at
20 192-93. He did, however, discuss Dr. Gee's opinion when assessing Plaintiff's RFC. *See*
21 *id.* at 201. There, the ALJ found that Dr. Gee's opinions were contradicted by Plaintiff's
22

1 self-reports of independence in her activities of daily living. *Id.* The Court addresses the
2 ALJ's evaluation of Dr. Gee's opinions below.

3 The step two inquiry is "merely a threshold determination meant to screen out
4 weak claims." *Buck v. Berryhill*, 869 F.3d 1040, 1048 (9th Cir. 2017) (citing *Bowen v.*
5 *Yuckert*, 482 U.S. 137, 146-47 (1987)); *see also Smolen v. Chater*, 80 F.3d 1273, 1290
6 (9th Cir. 1996) ("[T]he step two inquiry is a *de minimis* screening device to dispose of
7 groundless claims."). At step two, the ALJ must determine if the claimant suffers from
8 any impairments that are "severe." 20 C.F.R. § 416.920(c). "An impairment or
9 combination of impairments may be found 'not severe only if the evidence establishes a
10 slight abnormality that has no more than a minimal effect on an individual's work.'" *Webb v. Barnhart*, 433 F.3d 683, 686-87 (9th Cir. 2005) (quoting *Smolen*, 80 F.3d at
11 1290). As long as the claimant has at least one severe impairment, the disability inquiry
12 moves on to step three. *See* 20 C.F.R. § 416.920(d).

14 The step two inquiry "is not meant to identify the impairments that should be
15 taken into account when determining the RFC." *Buck*, 869 F.3d at 1048-49. At the RFC
16 phase, the ALJ must consider the claimant's limitations from all impairments, including
17 those that are not severe. *Id.* at 1049. "The RFC therefore should be exactly the same
18 regardless of whether certain impairments are considered 'severe' or not." *Id.* (emphasis
19 omitted).

20 The ALJ erred by failing to consider Plaintiff's knee impairment severe at step
21 two. The evidence indicated that Plaintiff's meniscus tear had more than a minimal
22 effect on her functional abilities. *See* AR at 877. However, the ALJ's error was harmless

1 at step two because the ALJ found that Plaintiff had at least one severe impairment, and
2 thus continued the disability evaluation. *See Buck*, 869 F.3d at 1049. The Court
3 addresses later in this opinion whether the ALJ committed harmful error at the RFC stage
4 in assessing Plaintiff's knee impairment, particularly with respect to Dr. Gee's opinions.

5 **B. The ALJ Harmfully Erred in Evaluating Plaintiff's Mental Impairments at**
6 **Step Three**

7 Plaintiff challenges the ALJ's determination that she did not meet a listing for her
8 mental impairments at step three of the disability evaluation process. Pl. Op. Br. at 3-5.
9 Plaintiff argues that she met the criteria under paragraphs B and C for listings 12.02
10 (neurocognitive disorders), 12.04 (depressive, bipolar and related disorders), or 12.06
11 (anxiety and obsessive-compulsive disorders). *Id.*

12 To be found disabled under listings 12.02, 12.04, or 12.06, a claimant must first
13 meet the criteria under paragraphs A and B, or paragraphs A and C. 20 C.F.R. Part 404,
14 Subpart P, App'x 1. "A claimant must 'present medical findings equal in severity to *all*
15 the criteria for the one most similar listed impairment.'" *Kennedy v. Colvin*, 738 F.3d
16 1172, 1173 (9th Cir. 2013) (emphasis in original) (quoting *Sullivan v. Zebley*, 493 U.S.
17 521, 531 (1990), *superseded by statute on other grounds as stated in Colon v. Apfel*, 133
18 F. Supp. 2d 330, 338-39 (S.D.N.Y. 2001)). The ALJ focused his discussion on
19 paragraphs B and C, so the Court will do the same. *See* AR at 193-94.

20 To satisfy the paragraph B criteria of listing 12.02, 12.04, or 12.06, Plaintiff must
21 have at least one extreme or two marked limitations in the following areas of mental
22 functioning: (1) understanding, remembering, or applying information; (2) interacting

1 with others; (3) concentrating, persisting, or maintaining pace; and (4) adapting or
2 managing oneself. 20 C.F.R. Part 404, Subpart P, App'x 1, § 12.01.

3 To satisfy the paragraph C criteria for listing 12.02, 12.04, or 12.06, Plaintiff must
4 show (1) that she is receiving ongoing treatment that diminishes the signs and symptoms
5 of her disorder, and (2) that she has minimal capacity to adapt to changes in her
6 environment or to demands that are not already part of her daily life. *Id.*

7 The evidence conflicts as to whether Plaintiff's impairments met a listing.
8 *Compare* AR at 431-42, 661-65 with 857-61, 906-19, 925-26. Ordinarily, the ALJ is
9 entitled to resolve conflicts in the evidence. *See Andrews*, 53 F.3d at 1039. However, as
10 discussed below, the ALJ erred in evaluating parts of the medical evidence. *See infra*
11 Part VII.D. Those errors erode the Court's confidence that the ALJ correctly assessed
12 Plaintiff's alleged impairments. Had the ALJ accepted the opinions of Christine
13 Youdelis-Flores, M.D., for example, he may have concluded that Plaintiff had marked
14 limitations in all four of the areas of mental functioning identified in paragraph B of
15 listings 12.02, 12.04, and 12.06. *See* AR at 908-09. As a result, the Court must conclude
16 that the ALJ harmfully erred in analyzing Plaintiff's impairments at step three. *See Stout*
17 *v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055-56 (9th Cir. 2006). The Court notes,
18 however, that it cannot reweigh this evidence, and thus does not decide whether Plaintiff
19 in fact proved she met a listing, only that the ALJ erred in his analysis of that question.
20 *See Thomas*, 278 F.3d at 954.

1 **C. The ALJ Erred in Evaluating Plaintiff's Symptom Testimony**

2 Plaintiff challenges the ALJ's rejection of her symptom testimony. *See* Pl. Op. Br.
3 at 13-18. The Court agrees.

4 The Ninth Circuit has "established a two-step analysis for determining the extent
5 to which a claimant's symptom testimony must be credited." *Trevizo v. Berryhill*, 871
6 F.3d 664, 678 (9th Cir. 2017). The ALJ must first determine whether the claimant has
7 presented objective medical evidence of an impairment that "could reasonably be
8 expected to produce the pain or other symptoms alleged." *Id.* (quoting *Garrison v.*
9 *Colvin*, 759 F.3d 995, 1014-15 (9th Cir. 2014)). At this stage, the claimant need only
10 show that the impairment could reasonably have caused some degree of the symptoms;
11 she does not have to show that the impairment could reasonably be expected to cause the
12 severity of the symptoms alleged. *Id.* The ALJ found that Plaintiff met this step because
13 her medically determinable impairments could reasonably be expected to cause the
14 symptoms she alleged. AR at 196.

15 If the claimant satisfies the first step, and there is no evidence of malingering,² the
16 ALJ may only reject the claimant's testimony "by offering specific, clear and convincing
17 reasons for doing so. This is not an easy requirement to meet." *Trevizo*, 871 F.3d at 678
18 (quoting *Garrison*, 759 F.3d at 1014-15). In evaluating the ALJ's determination at this

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20 ² The Commissioner argues that there was evidence of malingering, which in itself would
21 provide a basis for rejecting Plaintiff's symptom testimony. *See* Def. Resp. Br. (Dkt. # 14) at 6.
22 However, the ALJ did not rely on this evidence in isolation. He instead pointed to it as support
for the proposition that the objective medical evidence was inconsistent with Plaintiff's mental
health complaints. *See* AR at 199. The Court addresses the ALJ's treatment of the evidence in
this context rather than the context urged by the Commissioner.

1 step, the Court may not substitute its judgment for that of the ALJ. *Fair v. Bowen*, 885
2 F.2d 597, 604 (9th Cir. 1989). As long as the ALJ's decision is supported by substantial
3 evidence, it should stand, even if some of the ALJ's reasons for discrediting a claimant's
4 testimony fail. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

5 The ALJ found that Plaintiff's testimony concerning the intensity, persistence, and
6 limiting effects of her symptoms was "not entirely consistent with the medical evidence
7 and other evidence in the record." AR at 196. The ALJ first analyzed Plaintiff's physical
8 complaints, and found that the objective medical evidence did not support the severity of
9 symptoms Plaintiff alleged. *Id.* at 196-97. The ALJ next analyzed Plaintiff's mental
10 health complaints, and again found that the objective medical evidence did not support
11 the severity of symptoms Plaintiff alleged. *Id.* at 197-99. The ALJ last rejected
12 Plaintiff's symptom testimony because he determined it was inconsistent with Plaintiff's
13 daily activities. *Id.* at 200. The Court addresses each point in turn.

14 **1. The ALJ Erred in Rejecting Plaintiff's Physical Complaints as**
15 **Inconsistent with the Objective Medical Evidence**

16 Plaintiff alleged that she was unable to work due to ongoing pain, particularly in
17 her hands and feet. *Id.* at 90-94. She alleged that she can only stand for 15 minutes at a
18 time, can never sit without pain, and needs a walker to get around. *Id.* at 92-93. Plaintiff
19 alleged that she had difficulty grasping and holding things because of pain in her
20 dominant left hand. *Id.* at 91.

21 The ALJ rejected Plaintiff's physical symptom testimony as inconsistent with the
22 objective medical evidence. *Id.* at 196-99. He summarized Plaintiff's physical

1 | complaints, and cited to several medical records relating to those complaints. *Id.* at 196-
2 | 97. An ALJ may reasonably reject the claimant's subjective symptom testimony when it
3 | is inconsistent with or contradicted by the medical evidence. *See Morgan v. Comm'r of*
4 | *Soc. Sec. Admin.*, 169 F.3d 595, 599-600 (9th Cir. 1999). But the ALJ's explanation
5 | must be clear and convincing. *See Trevizo*, 871 F.3d at 678. Viewing the evidence as a
6 | whole, the ALJ's explanation here did not meet this standard.

7 | The ALJ walked through each of Plaintiff's allegedly severe impairments, but
8 | much of his discussion focused on irrelevant details. The ALJ noted that Plaintiff's HIV
9 | and diabetes were well-controlled by medication, and that Plaintiff failed to take her
10 | medication at times. *See AR* at 196-97. Although impairments that are well-controlled
11 | by medication are not disabling, *Warre ex rel. E.T. IV v. Comm'r of Soc. Sec. Admin.*,
12 | 439 F.3d 1001, 1006 (9th Cir. 2006), the aspects of these conditions (Plaintiff's white
13 | blood cell count and blood glucose levels) that were controlled by medication are
14 | unrelated to her physical limitations, which generally relate to mobility, *see AR* at 90-94.

15 | The ALJ pointed to several other medical findings that support rather than detract
16 | from Plaintiff's testimony. The ALJ noted that Plaintiff underwent a nerve conduction
17 | study that showed carpal tunnel syndrome. *AR* at 197. The ALJ also noted that "the
18 | record references an ongoing diagnosis of Raynaud's syndrome," and that Plaintiff
19 | "displayed features compatible with peripheral neuropathy." *Id.* And the ALJ noted that
20 | an MRI of Plaintiff's left knee revealed synovitis, as well as a large radial tear of the
21 | medial meniscus. *Id.* That Plaintiff experienced hand and foot pain, and difficulty
22 | standing, sitting, and walking is not unexpected based on these findings.

1 The ALJ noted several objective findings that were inconsistent with Plaintiff's
2 testimony regarding her physical limitations. The ALJ noted that Plaintiff had full upper
3 extremity strength on testing. *Id.* at 196, 785, 824-26. Plaintiff was able to walk on her
4 heels and toes, hop on each foot, and perform a deep knee bend. *Id.* at 196, 785. Plaintiff
5 had normal gait and intact coordination. *Id.* Further, although Plaintiff claimed she
6 needed a walker, Dr. Gee—the physician who diagnosed Plaintiff's meniscus tear—
7 opined that Plaintiff did not need an ambulatory assistive device. *Id.* at 197, 877.

8 Taken in isolation, these objective findings could potentially support the ALJ's
9 determination. But the ALJ's overall discussion of the objective medical evidence
10 indicates that the ALJ drew unreasonable conclusions from that evidence. The fact that
11 Plaintiff's white blood cell count was under control says nothing about Plaintiff's
12 allegations that she had trouble sitting, standing, and walking. The fact that Plaintiff had
13 carpal tunnel syndrome and a meniscus tear in no way contradicts her allegations of pain.
14 The Court cannot confidently conclude that the ALJ would have reached the same
15 disability determination based on the few objective findings he cited if he had
16 appropriately considered the remainder of the objective medical evidence. *See Stout*, 454
17 F.3d at 1055-56. The ALJ thus erred in rejecting Plaintiff's symptom testimony
18 regarding her physical symptoms as inconsistent with the objective medical evidence.

19 **2. The ALJ Erred in Rejecting Plaintiff's Mental Health Complaints as**
20 **Inconsistent with the Objective Medical Evidence**

21 Plaintiff alleged that, in addition to her physical limitations, she was unable to
22 work because she had difficulty reading and writing, possibly due to dyslexia. AR at 90,

1 374. Plaintiff alleged that she had angry outbursts where she would cry and get irritated
2 multiple times a week. *Id.* at 93. Plaintiff alleged that she had memory problems,
3 difficulty maintaining attention, and difficulty dealing with stress. *Id.* at 94, 379-80.

4 The ALJ rejected Plaintiff's testimony regarding these mental health symptoms for
5 two reasons. First, the ALJ determined that Plaintiff had not complied with her mental
6 health treatment, including taking prescribed medications. *See id.* at 198-99. Second, the
7 ALJ determined that although Plaintiff alleged worsening memory problems and a
8 decline in cognitive functioning, the evidence indicated otherwise. *Id.* at 199. Neither
9 reason is clear or convincing.

10 Much like the ALJ's treatment of the medical evidence relating to Plaintiff's
11 physical symptoms, his discussion of Plaintiff's noncompliance with treatment focuses
12 on trivial facts. The ALJ reasonably interpreted the evidence to conclude that Plaintiff
13 had not consistently sought treatment for depression or complied with medication
14 recommendations.³ *See id.* But Plaintiff's primary complaints related to cognitive
15 functioning, such as difficulty reading, writing, remembering, and maintaining attention,
16 which were not due solely to her depression. *See id.* at 90, 94, 374, 379-80. Plaintiff
17 should have complied with her doctors' treatment recommendations, but her failure to do
18
19

20 ³ It is important to note, however, that "'it is a questionable practice to chastise one with a
21 mental impairment for the exercise of poor judgment in seeking rehabilitation.'" *Nguyen v.*
22 *Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996) (quoting *Blankenship v. Bowen*, 874 F.2d 1116,
1124 (6th Cir. 1989)). This is particularly true where, as here, the claimant has shown poor
insight and judgment due to her mental impairments. *See AR* at 435, 448, 909.

1 so does not contradict her testimony regarding her cognitive difficulties. The ALJ thus
2 erred in relying on Plaintiff's noncompliance as a basis for rejecting her testimony.

3 The ALJ further erred in rejecting Plaintiff's testimony based on evidence that
4 allegedly showed no decline in cognitive functioning. *See id.* at 199. The ALJ noted that
5 Plaintiff earned a full-scale IQ score of 63, but that the examiner who administered this
6 test felt it was a low estimate of Plaintiff's actual IQ. *Id.* That suggests an inaccurate test
7 result, but it does not contradict Plaintiff's allegations of cognitive impairments. The
8 ALJ further noted that Dr. Dees raised concerns about whether Plaintiff gave full effort
9 during his psychological examination. *Id.* Again, that calls into question the validity of
10 Dr. Dees's determinations, but it does not contradict Plaintiff's claims of cognitive
11 impairment. Moreover, the ALJ acknowledged that Plaintiff later underwent further
12 cognitive testing, which showed mildly impaired to borderline overall intellectual
13 functioning. *Id.* The ALJ's discussion of this evidence does not convince the Court that
14 Plaintiff's testimony was inconsistent with or contradicted by the medical evidence. The
15 ALJ thus erred in rejecting Plaintiff's symptom testimony on this basis. *See Trevizo*, 871
16 F.3d at 678.

17 **3. The ALJ Erred in Rejecting Plaintiff's Symptom Testimony as**
18 **Contradicted by Plaintiff's Daily Activities**

19 The ALJ last rejected Plaintiff's symptom testimony because he found that it was
20 contradicted by her daily activities. AR at 200. An ALJ may reasonably discount a
21 claimant's symptom testimony when it is contradicted by the claimant's daily activities.
22 *See Fair*, 885 F.2d at 603. But "the mere fact that a plaintiff has carried on certain daily

1 activities, such as grocery shopping, driving a car, or limited walking for exercise, does
2 not in any way detract from her credibility as to her overall disability. “One does not
3 need to be ‘utterly incapacitated’ in order to be disabled.” *Vertigan v. Halter*, 260 F.3d
4 1044, 1050 (9th Cir. 2001) (quoting *Fair*, 885 F.2d at 603). The plaintiff’s daily
5 activities must contradict her testimony or reflect transferable work skills. *See Morgan v.*
6 *Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999); *Burch v. Barnhart*, 400
7 F.3d 676, 680-81 (9th Cir. 2005).

8 The ALJ erred in rejecting Plaintiff’s symptom testimony based on her daily
9 activities. The activities the ALJ cited are the bare minimum activities of life. For
10 example, the fact that Plaintiff “showered almost daily” in no way contradicts her
11 testimony that she had ongoing hand and foot pain, and could only stand and walk for a
12 short period of time. *See* AR at 90-94, 200. The fact that Plaintiff watched television,
13 shopped for groceries, and prepared her own food does not contradict her claims of
14 physical and mental impairments. *See id.* at 200, 374, 432.

15 In sum, the ALJ did not provide clear and convincing reasons to reject Plaintiff’s
16 symptom testimony. The Court cannot confidently conclude that he would have reached
17 the same nondisability determination had he appropriately considered this evidence. *See*
18 *Stout*, 454 F.3d at 1055-56. The ALJ thus harmfully erred in rejecting Plaintiff’s
19 symptom testimony. *See id.*

20 **D. The ALJ Partially Erred in Evaluating the Medical Evidence**

21 Plaintiff challenges the ALJ’s evaluation of the medical evidence. Pl. Op. Br. at 5-
22 11. She argues that the ALJ erred in evaluating the opinions of Wayne Dees, Psy.D.,

1 Rebekah Cline, Psy.D., Michelle Kim, Ph.D., and Christine Youdelis-Flores, M.D.,
2 regarding Plaintiff's mental limitations. *Id.* at 5-8. Plaintiff further argues that the ALJ
3 erred in evaluation the opinions of Albert Gee, M.D., and Rachel Bender Ignacio, M.D.,
4 regarding Plaintiff's physical limitations. *Id.* at 8-11.

5 The ALJ must provide "specific and legitimate reasons that are supported by
6 substantial evidence in the record" to reject the contradicted opinions of a treating or
7 examining doctor. *See Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996) (citing
8 *Andrews*, 53 F.3d at 1042). The ALJ can satisfy this requirement "by setting out a
9 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
10 interpretation thereof, and making findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th
11 Cir. 1998) (citing *Magallanes*, 881 F.2d at 751). The Court may draw "specific and
12 legitimate inferences from the ALJ's opinion." *Magallanes*, 881 F.2d at 755.

13 **1. The ALJ Did Not Harmfully Err in Rejecting Dr. Dees's Opinions**

14 Dr. Dees examined Plaintiff in June 2013. *See* AR at 431-42. He opined that
15 Plaintiff had marked limitations in a number of cognitive areas, including the ability to
16 maintain regular attendance and work within a schedule, adapt to changes in a work
17 setting, communicate and perform effectively in a work setting, and maintain appropriate
18 behavior in a work setting. *Id.* at 433.

19 The ALJ gave little weight to Dr. Dees's opinions. *Id.* at 200. The ALJ
20 determined that Plaintiff was not taking her medications regularly at the time of Dr.
21 Dees's assessment, other exams showed stable mood and improved overall functioning
22

1 when Plaintiff was compliant with her medications, and she displayed questionable effort
2 on testing. *Id.*

3 Plaintiff has not met her burden of showing that the ALJ harmfully erred in
4 evaluating the opinions of Dr. Dees. *See Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir.
5 2012) (citing *Shinseki v. Sanders*, 556 U.S. 396, 407-09 (2009)). Plaintiff did not argue
6 that the ALJ erred in discounting Dr. Dees's opinions in her opening brief. *See Pl. Op.*
7 *Br.* at 5. The Court will not address the ALJ's evaluation of medical opinions for which
8 Plaintiff has not identified any specific errors. *See Thomas*, 278 F.3d at 954.

9 **2. The ALJ Did Not Harmfully Err in Rejecting Dr. Cline's Opinions**

10 Dr. Cline examined Plaintiff in November 2015. *See AR* at 857-61. Dr. Cline
11 opined that Plaintiff had marked limitations in her abilities to: understand, remember, and
12 persist in tasks by following detailed instructions; learn new tasks; communicate and
13 perform effectively in a work setting; maintain appropriate behavior in a work setting;
14 and complete a normal work day or week without interruptions from her psychological
15 symptoms. *Id.* at 859.

16 The ALJ gave little weight to Dr. Cline's opinions. *Id.* at 200. The ALJ
17 determined that Plaintiff was not actively engaged in mental health treatment at the time
18 of Dr. Cline's evaluation, and Dr. Cline's opinions were inconsistent with her exam
19 findings. *Id.* Although the first of these reasons for rejecting Dr. Cline's opinions is
20 unconvincing, the second reason survives scrutiny.

21 The ALJ's first reason for rejecting Dr. Cline's opinions is essentially a criticism
22 of Plaintiff for failing to seek mental health treatment. But, as mentioned above, ALJs

1 should avoid questioning an individual with poor insight and judgment due to her mental
2 health for exercising poor judgment in seeking treatment. *See Nguyen*, 100 F.3d at 1465.
3 “[T]he fact that [Plaintiff] may be one of millions of people who did not seek treatment
4 for a mental disorder until late in the day is not a substantial basis on which to conclude
5 that [Dr. Cline’s] assessment of [Plaintiff’s] condition is inaccurate.” *Id.*

6 The ALJ’s second reason, which Plaintiff did not challenge in her opening brief, is
7 a reasonable interpretation of the evidence. An ALJ may discount a doctor’s opinions
8 when they are inconsistent with or unsupported by the doctor’s own clinical findings.
9 *See, e.g., Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). Here, Dr. Cline
10 reported from her mental status exam that Plaintiff’s thought process, orientation,
11 perception, memory, and concentration were within normal limits, while her fund of
12 knowledge was not, and her abstract thought, and insight and judgment were ambiguous.
13 *See AR at 861.* That Plaintiff’s thought process, perception, memory, and concentration
14 were within normal limits tends to contradict Dr. Cline’s opinions that Plaintiff was
15 markedly limited in her ability to understand, remember, and carry out detailed
16 instructions, or learn new tasks. The only area where Dr. Cline explicitly noted that
17 Plaintiff was not within normal limits was as to her fund of knowledge, but that does not
18 support a determination that, for example, Plaintiff was markedly limited in her ability to
19 maintain appropriate behavior or communicate and perform effectively in a work setting.
20 The ALJ reasonably found that Dr. Cline’s examination findings did not support her
21 opinions, and justifiably rejected Dr. Cline’s opinions on this basis.
22

1 Although the ALJ erred in relying on Plaintiff's failure to pursue mental health
2 treatment as a reason to discount Dr. Cline's opinions, that error was harmless. The
3 ALJ's second reason for discounting Dr. Cline's opinions was nonetheless valid, making
4 the ALJ's error inconsequential to the ultimate disability determination, and therefore
5 harmless. *See Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012).

6 **3. The ALJ Did Not Harmfully Err in Evaluating Dr. Kim's Opinions**

7 Dr. Kim evaluated Plaintiff in August 2016. AR at 661-65, 869-75. Dr. Kim
8 opined that Plaintiff had mild neurocognitive disorder due to multiple etiologies. *Id.* at
9 872. Dr. Kim opined that Plaintiff's overall intellectual abilities fell in the "mildly
10 impaired/borderline range." *Id.* Plaintiff's verbal reasoning, perceptual reasoning, and
11 word reading abilities were all mildly impaired. *Id.* Her cognitive functioning, including
12 problem solving, abstract reasoning, and recognition memory were impaired. *Id.*

13 The ALJ gave partial weight to Dr. Kim's opinions. *Id.* at 201. The ALJ reasoned
14 that Dr. Kim did not provide a functional assessment, but that Dr. Kim's assessments of
15 mild impairment were consistent with objective testing, Plaintiff's past work experience,
16 and Plaintiff's daily activities. *Id.*

17 Just like the ALJ's treatment of Dr. Dees's opinions, Plaintiff has failed to meet
18 her burden of showing that the ALJ harmfully erred in evaluating Dr. Kim's opinions.
19 *See Ludwig*, 681 F.3d at 1054 (citing *Shinseki*, 556 U.S. at 407-09). Plaintiff merely
20 argues that the ALJ was wrong in concluding that Dr. Kim's opinions were consistent
21 with objective testing, Plaintiff's past work experience, and Plaintiff's daily activities. Pl.
22 Op. Br. at 6. But Plaintiff has not specified any particular aspects of Dr. Kim's opinions

1 that should have been considered differently, nor how the outcome would be different
2 had the ALJ given different weight to Dr. Kim's opinions. Thus, Plaintiff has not shown
3 that the ALJ committed harmful error.

4 **4. The ALJ Harmfully Erred in Rejecting Dr. Youdelis-Flores's Opinions**

5 Dr. Youdelis-Flores was Plaintiff's treating doctor. *See* AR at 445-52, 666-73,
6 699-710, 740-47, 758-70, 906-19. In April 2017, Dr. Youdelis-Flores issued an opinion
7 stating that Plaintiff was unable to meet competitive standards in a number of work areas,
8 including the ability to: remember work-like procedures; maintain regular attendance;
9 sustain an ordinary routine without special supervision; perform at a consistent pace
10 without an unreasonable number and length of rest periods; accept instructions and
11 respond appropriately to criticism from supervisors; respond appropriately to changes in
12 the work setting; deal with normal work stress; and be aware of normal hazards and take
13 appropriate precautions. *Id.* at 908. Dr. Youdelis-Flores further opined that Plaintiff was
14 seriously limited in her ability to: understand, remember, and carry out very short, simple
15 instructions; work in coordination and get along with coworkers; make simple work-
16 related decisions; complete a normal work day or week without interruptions from her
17 symptoms; ask simple questions or request assistance; adhere to basic standards of
18 neatness and cleanliness; and travel in unfamiliar places. *Id.* at 908-09. Dr. Youdelis-
19 Flores last opined that Plaintiff was either seriously limited or unable to meet competitive
20 standards in her ability to: understand, remember, and carry out detailed instructions; set
21 realistic goals or make plans independently; deal with the stress of semiskilled and skilled
22

1 work; interact appropriately with the general public; and maintain socially appropriate
2 behavior. *Id.* at 909.

3 The ALJ gave Dr. Youdelis-Flores’s opinions little weight. *Id.* at 201. The ALJ
4 determined that Dr. Youdelis-Flores’s opinions were “inconsistent with the record.” *Id.*
5 The ALJ noted that Dr. Youdelis-Flores indicated that Plaintiff’s cocaine use disorder
6 was in remission, but the record showed cocaine use. *Id.* Plaintiff missed most of her
7 psychiatric appointments and did not regularly take her medications. *Id.* The record
8 showed overall improvement in functioning when Plaintiff took her medications. *Id.*
9 And Plaintiff’s daily activities indicated less severe cognitive and social limitations than
10 Dr. Youdelis-Flores described. *Id.*

11 The ALJ’s first justification for rejecting Dr. Youdelis-Flores’s opinions—that she
12 incorrectly diagnosed Plaintiff’s cocaine use disorder as in remission—is too trivial to
13 support the outcome here. An ALJ may consider inconsistencies in the medical record,
14 but a single discrepancy fails to justify outright rejection of the doctor’s opinions. *Cf.*
15 *Popa v. Berryhill*, 872 F.3d 901, 906-07 (9th Cir. 2017) (“A single discrepancy [in the
16 claimant’s statements] fails . . . to justify the wholesale dismissal of a claimant’s
17 testimony.”) (citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883-84 (9th Cir. 2006)).
18 The ALJ did not explain how Dr. Youdelis-Flores’s opinions may have changed had she
19 known that Plaintiff used cocaine on a few occasions, and the Court will not perform that
20 analysis for the ALJ.

21 The ALJ erred in rejecting Dr. Youdelis-Flores’s opinion based on Plaintiff’s
22 failure to attend psychiatric appointments and comply with her medications. Plaintiffs

1 have an obligation to treat their impairments. *Cf. Orn v. Astrue*, 495 F.3d 625, 638 (9th
2 Cir. 2007) (“[A]n ‘unexplained, or inadequately explained, failure to seek treatment’ may
3 be the basis for an adverse credibility finding unless one of a ‘number of good reasons for
4 not doing so’ applies.”) (quoting *Fair*, 885 F.2d at 603). But again, it is a mistake to
5 chastise one with mental health problems for failing to seek or comply with treatment,
6 particularly where, as here, those mental health problems impair the claimant’s judgment
7 and insight. *See Nguyen*, 100 F.3d at 1465.

8 The ALJ’s next reason for rejecting Dr. Youdelis-Flores’s opinions—that
9 Plaintiff’s overall functioning improved with medication compliance—is not adequately
10 supported. The ALJ only pointed to two records to indicate that Plaintiff improved with
11 medication. *See* AR at 198, 740, 771. At most, those records suggest that Plaintiff’s
12 mood improved with medication. *See id.* at 740, 771. Dr. Youdelis-Flores’s opinions
13 focus on Plaintiff’s cognitive abilities, not her mood. *See id.* at 908-09. Thus, like the
14 ALJ’s discussion of Plaintiff’s possible cocaine use, this was not an adequate reason to
15 reject Dr. Youdelis-Flores’s opinions.

16 Finally, the ALJ erred in rejecting Dr. Youdelis-Flores’s opinions as inconsistent
17 with Plaintiff’s daily activities. As discussed above, the ALJ’s analysis of Plaintiff’s
18 daily activities makes a number of unreasonable logical leaps. *See supra* Part VII.C.3.
19 That Plaintiff “showered almost daily,” watched television, and infrequently went
20 grocery shopping does not contradict Dr. Youdelis-Flores’s opinions.

21 In sum, the ALJ failed to give specific and legitimate reasons for rejecting Dr.
22 Youdelis-Flores’s opinions. The ALJ’s error cannot be considered harmless because the

1 Court is unable to say with any certainty that the ALJ would have reached the same
2 disability determination if he had properly considered Dr. Youdelis-Flores's opinions.
3 *See Stout*, 454 F.3d at 1055-56.

4 **5. The ALJ Harmfully Erred in Rejecting Dr. Gee's Opinions**

5 Dr. Gee evaluated Plaintiff in early 2017 regarding ongoing knee pain. *See AR* at
6 876-905. The record includes an opinion purportedly from Dr. Gee but signed by Travis
7 Fann, PA-C. *See id.* at 876-77. That opinion reported that Plaintiff could not do the
8 following on a sustained basis without assistance: walk a block at a reasonable pace on
9 rough or uneven surfaces; carry out routine ambulatory activities including grocery and
10 clothes shopping and banking; and climb several stairs at a reasonable pace with use of
11 only a single hand rail. *Id.* at 877.

12 The ALJ gave Dr. Gee's opinions little weight. *Id.* at 201. The ALJ reasoned that
13 Dr. Gee's treatment notes indicated only conservative treatment, and that Plaintiff's self-
14 reported independence in her daily activities contradicted Dr. Gee's opinions. *Id.*

15 The ALJ's first reason for rejecting Dr. Gee's opinions fails. The reason Dr.
16 Gee's records indicate only conservative treatment is because Dr. Gee opined that
17 surgery was unlikely to "actually restore[] any of the biomechanics of the meniscus." *Id.*
18 at 880. Furthermore, Dr. Gee recommended Plaintiff undergo physical therapy and a
19 cortisone injection to see if that led to improvement. *Id.*

20 The ALJ's second reason for rejecting Dr. Gee's opinions is similarly
21 unconvincing. Again, the ALJ's analysis of Plaintiff's daily activities is unreasonable.
22

1 *See supra* Part VII.C.3, VII.D.4. Plaintiff's daily activities do not contradict Dr. Gee's
2 opinions.

3 The ALJ failed to give specific and legitimate reasons for rejecting Dr. Gee's
4 opinions, and thus erred. *See Lester*, 81 F.3d at 830-31. Like the ALJ's treatment of Dr.
5 Youdelis-Flores's opinions, the Court cannot say with any certainty that the ALJ would
6 have reached the same disability determination if he had properly considered Dr. Gee's
7 opinions. *See Stout*, 454 F.3d at 1055-56. The ALJ thus harmfully erred. *Id.*

8 **6. The ALJ Harmfully Erred in Rejecting Dr. Ignacio's Opinions**

9 Dr. Ignacio was one of Plaintiff's treating physicians. *See AR* at 485-89, 548-49,
10 572-76, 587-92, 674-98, 716-22, 731-39, 802-12, 920-39. Dr. Ignacio completed a
11 medical opinion form stating that Plaintiff could occasionally lift 10 pounds, frequently
12 lift less than 10 pounds, stand and/or walk for less than two hours in an eight-hour day,
13 and sit for about four hours in an eight-hour day. *Id.* at 920. Dr. Ignacio opined that
14 Plaintiff could frequently twist and stoop, never crouch or climb ladders, and
15 occasionally climb stairs. *Id.* at 921. She opined that Plaintiff could not reach, finger,
16 push, pull, handle, or feel. *Id.* Dr. Ignacio opined that Plaintiff should avoid all exposure
17 to extreme cold, and would be absent from work due to her impairments about three days
18 per month. *Id.*

19 Dr. Ignacio also opined about Plaintiff's mental impairments. *See id.* at 925-26.
20 She opined that Plaintiff had marked difficulties in maintaining social functioning and
21 completing tasks in a timely manner due to deficiencies in concentration, persistence, or
22 pace. *Id.* at 925. Dr. Ignacio opined that Plaintiff would be unable to perform detailed or

1 complicated tasks, frequent interaction with coworkers, supervisors, or the public, and
2 fast-paced tasks. *Id.* at 926.

3 The ALJ gave Dr. Ignacio's opinions little weight. *Id.* at 201. The ALJ explained
4 that Dr. Ignacio's opinion was not completely consistent with the record. *Id.* at 201-02.
5 He stated that Plaintiff had full upper extremity strength on examinations, and mostly
6 normal gait. *Id.* at 201. The ALJ added that Dr. Ignacio referenced Raynaud's
7 syndrome, left meniscal tear, and low back pain as support for her findings, but did not
8 mention HIV, diabetes, or carpal tunnel syndrome. *Id.* at 201-02. The ALJ also
9 determined that no objective evidence supported a severe back impairment. *Id.* at 202.
10 The ALJ did not address Dr. Ignacio's opinions regarding Plaintiff's mental impairments.
11 *See id.*

12 Although some aspects of the ALJ's reasoning find support in the record, several
13 of his statements are so obviously inaccurate that the Court cannot confidently conclude
14 the ALJ appropriately discounted Dr. Ignacio's opinion. *Cf. Burrell v. Colvin*, 775 F.3d
15 1133, 1140 (9th Cir. 2014) (holding that "one weak reason," even if supported by
16 substantial evidence, "is insufficient to meet the 'specific, clear and convincing'
17 standard" for rejecting a claimant's testimony) (quoting *Molina*, 674 F.3d at 1112). First,
18 the ALJ clearly erred in reasoning that Dr. Ignacio's opinions were entitled to little
19 weight because she failed to mention HIV, diabetes, or carpal tunnel syndrome. Dr.
20 Ignacio completed an entire form discussing Plaintiff's HIV and accompanying
21 limitations. *See id.* at 922-27. Second, the ALJ's own decision contradicts his
22 determination that the record contains minimal evidence of Raynaud's syndrome. As the

1 ALJ noted, two separate doctors—Dr. Kim and Dr. Ignacio—both indicated that Plaintiff
2 suffers from Raynaud’s syndrome. *Id.* at 197, 693, 726. Third, as discussed above, the
3 ALJ unjustifiably relied on his conclusion that Plaintiff received only conservative
4 treatment for her knee impairment. Again, Plaintiff did not undergo surgery on her knee
5 because Dr. Gee advised against it. *See* AR at 880. Plaintiff received a cortisone
6 injection and a recommendation for physical therapy. *See id.* This does not contradict
7 Dr. Ignacio’s opinions.

8 Some of the ALJ’s analysis finds support in the record, such as his determination
9 that the evidence did not support that Plaintiff suffered from a severe back impairment.
10 *See id.* at 202. But the fact that the ALJ so obviously misinterpreted the evidence
11 discussed above undermines any confidence the Court has that the ALJ properly
12 considered Dr. Ignacio’s opinions as a whole. The ALJ therefore harmfully erred in
13 rejecting Dr. Ignacio’s opinions. *See Stout*, 454 F.3d at 1055-56.

14 **E. The ALJ Erred in Assessing Plaintiff’s RFC and Conducting the Step Five**
15 **Evaluation**

16 Plaintiff argues that the ALJ erred in assessing the RFC and, in turn, conducting
17 the step five evaluation. Pl. Op. Br. at 11-13. Plaintiff’s argument is largely based on her
18 earlier arguments regarding the ALJ’s failure to properly evaluate the medical evidence
19 and incorporate all of her alleged impairments in the RFC. *See id.* Because the Court has
20 found that the ALJ erred in assessing Plaintiff’s testimony and some of the medical
21 evidence, the Court agrees that the ALJ erred in assessing Plaintiff’s RFC, and in basing
22 his step five findings on that RFC. *See Robbins*, 466 F.3d at 885 (holding that the ALJ’s

1 RFC determination was not supported by substantial evidence where he failed to properly
2 account for all of the evidence).

3 **F. Scope of Remand**

4 Plaintiff asks the Court to remand for an award of benefits. Pl. Op. Br. at 18.
5 Remand for an award of benefits “is a rare and prophylactic exception to the well-
6 established ordinary remand rule.” *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir.
7 2017). The Ninth Circuit has established a three-step framework for deciding whether a
8 case may be remanded for an award of benefits. *Id.* at 1045. First, the Court must
9 determine whether the ALJ has failed to provide legally sufficient reasons for rejecting
10 evidence. *Id.* (citing *Garrison*, 759 F.3d at 1020). Second, the Court must determine
11 “whether the record has been fully developed, whether there are outstanding issues that
12 must be resolved before a determination of disability can be made, and whether further
13 administrative proceedings would be useful.” *Treichler v. Comm’r of Soc. Sec. Admin.*,
14 775 F.3d 1090, 1101 (9th Cir. 2014) (internal citations and quotation marks omitted). If
15 the first two steps are satisfied, the Court must determine whether, “if the improperly
16 discredited evidence were credited as true, the ALJ would be required to find the
17 claimant disabled on remand.” *Garrison*, 759 F.3d at 1020. “Even if [the court]
18 reach[es] the third step and credits [the improperly rejected evidence] as true, it is within
19 the court’s discretion either to make a direct award of benefits or to remand for further
20 proceedings.” *Leon*, 880 F.3d at 1045 (citing *Treichler*, 773 F.3d at 1101).

21 The appropriate remedy here is to remand for further proceedings. Although the
22 first step of the remand-for-benefits framework has been met, the second has not. The

1 Court is not in a position to weigh the medical opinions, some of which the ALJ erred in
2 assessing, and others he did not. *See Thomas*, 278 F.3d at 954. The Court cannot assess
3 whether Plaintiff's impairments met a listing based on the conflicts in the evidence. *See*
4 *supra* Part VII.B. And the Court cannot translate the evidence into an RFC. *See Rounds*
5 *v. Comm'r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015) (noting that the ALJ is
6 responsible for translating the evidence into an RFC). Remand for further proceedings is
7 necessary to resolve these issues. *See Leon*, 880 F.3d at 1047-48 (affirming the district
8 court's remand for further proceedings rather than remand for an award of benefits where
9 there were unresolved conflicts and ambiguities in the evidence).

10 On remand, the ALJ shall reevaluate Plaintiff's testimony; reassess the opinions of
11 Dr. Youdelis-Flores, Dr. Gee, and Dr. Ignacio; reassess Plaintiff's alleged impairments at
12 step three of the disability evaluation process; reassess Plaintiff's RFC; and conduct
13 further proceedings as necessary to reevaluate the disability determination in light of this
14 opinion.

15 **VIII. ORDER**

16 Therefore, it is hereby **ORDERED** that the Commissioner's final decision
17 denying Plaintiff disability benefits is **REVERSED** and this case is **REMANDED** for
18 further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

19 Dated this 5th day of March, 2019.

20
21 

22 **BENJAMIN H. SETTLE**
United States District Judge